

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

MARCUS E. LOLAR,)	
)	
Petitioner,)	
)	
v.)	Case No. 16-CV-692-GKF-TLW
)	
JOE M. ALLBAUGH, Director,)	
Oklahoma Department of Corrections,)	
)	
Respondent.)	

OPINION AND ORDER

On November 16, 2016, Petitioner filed this habeas corpus action pursuant to 28 U.S.C. § 2254 (Dkt. 1), along with a motion to proceed *in forma pauperis* (Dkt. 2). On December 2, 2016, the Court entered an Order denying the motion and directing Petitioner to pay the \$5.00 filing fee for this action by January 3, 2017 (Dkt. 3). Petitioner failed to pay the filing fee as directed by the Court or to show cause for his failure to do so. Therefore, this action was dismissed without prejudice on January 30, 2017, for Petitioner's failure to comply with an Order of the Court (Dkt. 5).

On March 15, 2017, Petitioner filed a notice of matter under advisement for more than 90 days (Dkt. 6), and the following day the Clerk of Court responded with a letter and relevant documents advising that this case had been dismissed without prejudice (Dkt. 7). On March 29, 2017, Petitioner filed a motion to reconsider the dismissal (Dkt. 8) and a notice of appeal to the circuit court (Dkt. 9). The Court liberally construes Petitioner's motion to reconsider as a motion for relief from a final judgment, order, or proceeding, pursuant to Fed. R. C.V. P. 60(b).

Petitioner alleges in his motion that he never received the Court's Order directing him to pay the filing fee. He has submitted a copy of his facility Inmate Mail History, showing that after his

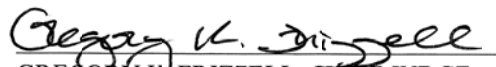
petition was filed on November 16, 2016, he did not receive any mail from this Court until March 20, 2017, which presumably was the letter advising him that his case had been dismissed. The Inmate Mail History indicates to the Court that Petitioner did not receive the Court's order denying his motion to proceed *in forma pauperis* (Dkt. 3), the Order dismissing this action (Dkt. 4), or the Judgment (Dkt. 5).¹

Pursuant to Fed. R. C.V. P 60(b)(6), "the court may relieve a party . . . from a final judgment, order, or proceeding for . . . any . . . reason that justifies relief." The Court finds Petitioner's missing incoming mail justifies relief from the judgment. Therefore, Petitioner's motion to reconsider the dismissal of this action (Dkt. 8) is **granted**, the Court Clerk is directed to **reopen this case**, and Petitioner is directed to pay the \$5.00 filing fee within 30 days or by **May 24, 2017**.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Petitioner's motion to reconsider (Dkt. 8) is **granted**, pursuant to Fed. R. C.V. P. 60(b)(6).
2. The Court Clerk is directed to **reopen this case**.
3. Petitioner is directed to pay the \$5.00 filing fee or show cause for his failure to pay the fee within 30 days or by **May 24, 2017**.
4. The Court Clerk is directed to send a copy of this Opinion and Order to the Tenth Circuit Court of Appeals.

IT IS SO ORDERED 24th day of April 2017.


GREGORY K. FRIZZELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT

¹ These documents were sent to Petitioner with the March 16, 2017, letter (Dkt. 7).